

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

SUMMIT MEDICAL GROUP, PLLC, a
Michigan Professional Limited Liability
Company,

Case No: 19-011754-CB
Hon. Brian R. Sullivan

Plaintiff,

-vs-

MIDWEST SURGICAL AFFILIATED, PLLC
d/b/a COMPLETE PAIN SPECIALISTS and
DR. EDRICK FERGUSON,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION
FOR TEMPORARY RESTRAINING ORDER**

At a session of said Court, held in the City
County Building, City of Detroit, County of
Wayne, State of Michigan, on
9/20/2019

PRESENT: HONORABLE BRIAN R. SULLIVAN

Plaintiff Summit Medical Group, PLLC (Summit) filed suit and a motion for a Temporary Restraining Order against Dr. Edrick Ferguson and Midwest Surgical Affiliates, PLLC (defendants). Plaintiff sued defendants for breach of the asset and LLC purchase agreement. Plaintiff sought a Temporary Restraining Order to prohibit defendants use of any of the purchased assets.

The court denies plaintiffs motion for a Temporary Restraining Order for the reason plaintiff has an adequate remedy at law for money damages.

FACTS

On February 11, 2019 Summit and defendants entered into an asset and LLC membership purchase agreement for the assets of, and entity of, Summit, LLC (LLC). Bitkowski sold the LLC to defendants right after (same day) he bought it from Dr. Jankowski. Dr. Ferguson made a down payment of \$100,000.00 and several monthly installment payments of \$8,882.34. Ferguson then stopped monthly installment payments after June, 2019. Dr. Ferguson claims he stopped making monthly payments because, unbeknownst to him, Summit Medical Group was not really owned by Bitkowski but by Dr. Jankowski, who is a party to a Federal RICO lawsuit¹. Ferguson said that RICO suit was known to the seller but it was not disclosed to defendants before the sale. Ferguson claims he has been unable to do business with Medicare and other insurance companies (especially auto) because of that suit and Jankowski's past experience with those entities. The amount of business Summit performed after the sale to defendants drastically declined.

DISCUSSION

¹The RICO case filed in federal court against Jankowski involves allegations of conspiracy, the distribution and possession with intent to distribute controlled substances and healthcare fraud.

The court concludes plaintiff has an adequate remedy at law. Monetary damages are an adequate remedy available to plaintiff. Plaintiff has not suffered an irreparable injury. See *Samson v Murray*, 415 US 461 (1974); *Van Buren Public Schools v Wayne Circuit Judge*, 61 Mich App (1975); *Dunlap v City of Southfield*, 54 Mich App 398 (1974); *Royal Oak School District v State Tenure Commission*, 367 Mich 689 (1962).

The grant or denial of injunctive relief is based on the particular facts of each case. See *Holly Township v Department of Natural Resources*, 440 Mich 891 (1992). The moving party must have standing, a substantial personal interest at stake in the case or controversy. See *Allstate Insurance Company v Hayes*, 442 Mich 56, 68 (1993). Plaintiff does. The moving party has the burden to demonstrate irreparable harm will result in the absence of a restraining order or injunction. See *Baltic Mining Company v Houghton Circuit Judge*, 177 Mich 632, 643 (1913). A preliminary injunction or temporary restraining order may be granted “if it appears that there is a real and substantial question between the parties, to be investigated in accord of equity, and, in order to prevent irremediable injury to the complainant, before his claims can be investigated, it is necessary to prohibit any change in the conditions and relations of the property and of the parties during the litigation.” See *Michigan Coalition v Civil Service Commission*, 465 Mich 212, 224 (2001). In short, a Temporary Restraining Order or Preliminary Injunction serves the purpose of maintaining the status quo as one of its functions during suit. A party must make “a particularized showing of concrete irreparable harm or injury” to obtain the relief. *Michigan Coalition*, 465 Mich at 225.

MCR 3.310(B)(1) sets forth the requirements of a Temporary Restraining Order.

MCR 3.310(B)(1) states:

(a) it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss or damage would result to the applicant from the delay required to affect notice or from the risk that the notice itself will precipitate adverse action before an order can be issued
...

The requirements of a Temporary Restraining Order or injunction is met if the moving party satisfies the court it will suffer irreparable injury and that there is no adequate remedy at law. See *Royal Oak District v State Tenure Commission*, 367 Mich 689, 693 (1962); *Schantz v Ruehs*, 348 Mich 680, 683 (1957). Plaintiff has not done so for the reason there is an adequate legal remedy, money damages, if plaintiff prevails.

For all the above reasons and those stated on the record, plaintiff's motion for a temporary restraining order is denied; and

IT IS SO ORDERED.

/s/ Brian R. Sullivan 9/20/2019
BRIAN R. SULLIVAN
Circuit Court Judge

ISSUED: